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District Court

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UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,) Criminal Case No. 05-00027
Plaintiff,)
v.) GOVERNMENT'S MEMORANDUM IN
ZHENG, MING YAN,) OPPOSITION TO DEFENDANT'S
Defendant.) MOTION TO DISMISS IN PART
Date: May 11, 2006
Time: 9:00 a.m.

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Leonardo M. Rapadas, United States Attorney, and Timothy E. Moran, Assistant United States Attorney, and hereby files its response to the defendant's motion to dismiss in part. The Government respectfully requests that the Court deny the defendant's motion as untimely and not supported by fact or law.

I. THE MOTION IS UNTIMELY.

Local Criminal Rule 12.1 provides that “[a]ll motions under Fed. R. Crim. P. 12(b) . . . shall be filed within fourteen (14) days after entry of plea.” The defendant entered her plea to the superseding indictment on December 30, 2005. Furthermore, the Court’s December 30, 2005

1 Order Setting Trial Date (a copy of which is attached) confirmed the pretrial motion deadline of
 2 January 13, 2006. The instant motion was filed on March 31, 2006, and is therefore untimely.

3 II. THE COUNTS ARE NOT MULTIPLICIOUS.

4 Defendant argues that Counts Two, Three and Four (all alleging sex trafficking in
 5 violation of 18 U.S. C. § 1591(a))¹ and Counts Seven and Eight (alleging foreign transportation
 6 of persons in execution of fraud scheme in violation of 18 U.S.C. § 2314) are multiplicitous.
 7 Multiplicity occurs when the government charges a single offense in more than one count.
 8 Blockburger v. United States, 284 U.S. 299, 304 (1932); United States v. McKittirck, 142 F.3d
 9 1170, 1176 (9th Cir. 1998). The test is whether each count “requires proof of an additional fact
 10 which the other does not.” Blockburger, 284 U.S. at 304. None of the counts in the superseding
 11 indictment are multiplicitous because they allege separate acts, requiring proof of different facts.

12 The defendant argues that the three violations of 18 U.S.C. § 1591(a)(2), which she
 13 incorrectly contends criminalize participation in a venture, must be charged in one count. The
 14 defendant ignores that Counts Two, Three, and Four charge violations of § 1591(a), *subsections*
 15 (1) and (2) in the conjunctive.² Subsection (1) criminalizes recruiting “a person.” Likewise,
 16 subsection (2) criminalizes benefitting “from participation in a venture which has engaged in an
 17 act described *in violation of paragraph (1)*” – in other words, the recruitment, etc., of a particular
 18 person. Therefore, the government must prove each count with respect to a particular person,
 19 namely the three victims, Lian Wei, Chi Xiumei, and Wei Quixiang. It does not criminalize the
 20 venture itself. Instead, the government must prove that the defendant recruited Lian Wei, or

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 23 ¹Title 18, United States Code, § 1591(a) prohibits whoever
 24 “(1) in or affecting interstate or foreign commerce, or within the special maritime and
 25 territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides,
 26 or obtains by any means a person; or (2) benefits, financially or by receiving anything of
 27 value, from participation in a venture which has engaged in an act described in violation
 28 of paragraph (1), knowing that force, fraud, or coercion described in subsection (c)(2)
 will be used to cause the person to engage in a commercial sex act....”

²As the defendant concedes, charging two theories in a single count is proper. United States v. UCO, Inc., 546 F.2d 833, 838 (9th Cir. 1976).

1 benefitted from the act of her recruitment; evidence concerning Lian will not suffice to prove
2 that she recruited Chi Xiumei. In fact, the defendant concedes this point, at least with respect to
3 subsection (1), as she does not argue that violations of subsection (1) are multiplicitous.
4 Accordingly, because Counts Two, Three, and Four require proof of different facts, they pass the
5 Blockburger test.

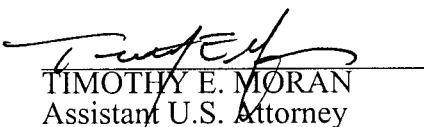
6 Counts Seven and Eight also are not multiplicitous. In Count Seven, the government must
7 prove a foreign transportation that took place on or about October 4, 2004, and in Count Eight
8 must prove a transportation that took place on or about November 11, 2004. The evidence of
9 events on October 4 would not prove what happened on November 11; in other words, the
10 government must prove different facts for each count. In fact, the two Counts actually constitute
11 separate transactions. That the transactions relate to the same scheme to defraud is irrelevant
12 because the crime charged in Count Seven was complete on October 4 and a new crime began
13 with the transportation on November 11. See Blockburger, 284 U.S. at 302 (not multiplicitous to
14 charge separate transactions separately, even when they occurred on the same day).³

15 III. CONCLUSION

16 For the reasons stated above, the Government respectfully requests that the Court deny
17 the defendant's partial motion to dismiss.

18
19 Dated: April 20, 2006
20 Saipan, CNMI

21 LEONARDO M. RAPADAS
22 United States Attorney
23 District of the Northern Mariana Islands

24 By: 
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TIMOTHY E. MORAN
Assistant U.S. Attorney

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DEC 30 2012

IN THE UNITED STATES DISTRICT COURT Clerk
District Court
for The Northern Mariana Islands
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,)
Plaintiff,) CRIMINAL CASE NO. 05-00027
-v-)
MING YAN ZHENG,) ORDER
Defendant.) SETTING TRIAL DATE

IT IS HEREBY ORDERED that the jury trial herein shall commence on **MONDAY, FEBRUARY 27, 2006 at 9:00 a.m.**

IT IS FURTHER ORDERED that pretrial motions shall be filed no later than **FRIDAY, JANUARY 13, 2006**, pursuant to Local Rule LCrR 12.1.

IT IS FURTHER ORDERED that the following shall be filed with this Court no later than seven (7) days prior to trial:

- 1) Proposed jury voir dire questions;
- 2) A joint exhibit list - (Government's exhibits numbered; Defendant's exhibits lettered)(One original and three copies for the Court);
- 3) A complete set of marked exhibits (with a three copies for the Court);
- 4) Proposed verdict forms;
- 5) Witness lists for purposes of voir dire only. (Witness lists shall include: legal names, aliases, nicknames, place of residence and place of employment),
(One original and three copies for the Court);

1 6) Proposed jury instructions. (Those jury instructions upon which agreement cannot
2 be reached shall be submitted in a separate packet, together with the objections and
3 authority therefore of each party.)

4 Dated this 30th day of December, 2005.

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8 AUX R. MUNSON

9 Chief Judge

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